Public Notice

US Army Corps of Engineers.
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice No. CENAP-OP-R-2008-159	Date FEB 27 2008
Application No. CENA-OP-R-2008-159	File No. CENAP-OP-R-2008-159
In Reply Refer to: REGULATORY BRANCH	

This District has received an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The purpose of this notice is to solicit comments and recommendations from the public concerning issuance of a Department of the Army permit for the work described below.

APPLICANT: DDNREC , Division of Soil & Water

AGENT: DDNREC, Division of Soil & Water

WATERWAY: Delaware Bay

LOCATION: N. Bowers Beach, Kent County, Delaware

ACTIVITY: The Delaware Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation proposes to complete construction of an existing sand management structure within Delaware Bay at the mouth of the Murderkill River, in North Bowers Beach, Kent County, Delaware.

The existing sand management structure is composed of tiered, grout-filled nylon bags located on the north side of the mouth of the Murderkill River, and extending approximately 220 linear feet bayward of the high tide line. The structure is designed to mitigate the effects of beach erosion, and stabilize a section of the Delaware Bay shoreline at Bowers Beach. The structure was originally constructed in 1983 under the authorization of Department of the Army permit CENAP-OP-R-198600302-15. Subsequent approval to extend the structure approximately 100 feet bayward (east) was granted by the Corps of Engineers in 1995 and again by letter dated October 19, 2001 (file CENAP-OP-R-200100076-23). However, the structure was not entirely completed prior to expiration of the previously issued permits. The Division of Soil and Water Conservation is now applying to complete the previously authorized project.

The revised work to extend the structure began in late November 1995. It was suspended in early December 1995 due to inclement weather conditions. At the time the project was suspended, construction of a portion of the bottom row and a portion of the second row of the three tiered structure was completed. This included 27 of the permitted 54 grout filled nylon bags.

Instead of returning to complete the work the following year, Division officials decided to observe the extended structure, as built, for a couple of years to determine if it would function as well as the original design. Recent observations indicated it is not. Therefore, authorization is now being sought to complete construction of the previously approved extended portion of the structure based of existing site conditions. This will involve the placement of 18 bags, 9 to complete the second row and 9 to complete the top row. As before, the bags, 156 inches long and 60 inches wide before filling, will be filled in place with approximately three (3) cubic yards of cement that will be trucked to the site.

The Division is also requesting authorization to place 30 additional grout filled nylon bags (saddlebags) along the top of the sand management structure. These saddlebags, approximately 72 inches long by 24 inches wide before filling, will be filled in place with cement that will be trucked to the site. They will be located at each joint along the top of the structure. Each saddlebag will contain approximately 0.45 cubic yards of cement when filled.

IMPACTS:

Subtidal Area (below MHW): 1,290 square feet.
Supratidal Area (between HTL and MHW): 475 square feet.

** Refer to the enclosed plan drawings E1-E4, for an illustration of the proposed work**

PURPOSE: The purpose of this activity is to make the structure more sand tight and preclude sediment from filtering through the structure into the Murderkill River channel during high tide and storm occurrences.

A preliminary review of this application indicates that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The decision whether to issue a permit will be based on an evaluation of the activity's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments.

All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and welfare of the people. A Department of the Army permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments on the proposed work should be submitted, in writing, within 15 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Review of the National Register of Historic Places indicates that no registered properties or properties listed as eligible for inclusion therein are located within the permit area of the work.

Essential Fish Habitat Assessment: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (public law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect essential fish habitat (EFH).

Effects of the Project on Essential Fish Habitat (EFH): The project is located in Essential Fish Habitat identified on Sheet 59 of Guide to Essential Fish Habitat Designations in the Northeastern United States, Volume IV: New Jersey and Delaware, March 1999. The following managed species of fish have been listed in the above referenced guide as occurring in the vicinity of the project:

Bluefish (Pomatomus saltatrix), summer flounder (Paralichthys dentatus), scup (Stenotomus chrysops), black sea bass (Centropristus striata), spiny dogfish (Squalus acanthias),

tilefish (Lopholatilus chamaeleonticeps), whiting (Merluccius bilinearis), surf clam (Spisula solidissima), ocean quahog (Artica islandica), long finned squid (Loligo pealei), short finned squid (Illex illecebrosus), Atlantic butterfish (Peprilus triacanthus), Atlantic mackerel (Scomber scombrus), king mackerel (Scomberomorus cavalla), Spanish mackerel (Scomberomorus maculatus), Atlantic cod (Gadus morhua), witch flounder (Glyptocephalus cynoglossus), American plaice (Hippoglossoides platessoides), yellowtail flounder (Pleuronectes ferrugineus), ocean pout (Macrozoarces americanus), haddock (Melanogrammus aeglefinus), silver hake (Merluccius bilinearis), pollock (Pollachius virens), winter flounder (Pleuronectes americanus), summer flounder (Paralicthys dentatus), windowpane flounder (Scophthalmus aquosus), redfish (Sebastes fasciatus), red hake (Urophycis chuss), white hake (Urophycis tenuis), Atlantic halibut (Hippoglossus hippoglossus), offshore hake (Merluccius alibidus), Atlantic sea scallop (Placopecten magellanicus), Atlantic sea herring (Clupea harengus), Atlantic salmon (Salmo salar), monkfish (Lophius americanus), swordfish (Xiphias gladius), bluefin tuna (Thunnus

rhynnus), bigeye tuna (Thunnus obesus), albacore (Thunnus alalunga), yellowfin tuna (Thunnus albacares), skipjack tuna (Katsuwonus pelamus), cobia (Rachycentron canadum), blue marlin (Makaira nigricans), white marlin (Tetrapturus albidus); and the following shark species: tiger (Galeocerdo cuvieri), scalloped hammerhead (Sphyrna lewini), sandbar (Carcharhinus obscurus), sand tiger (Odontaspis taurus), dusky (Carcharhinus plumbeus), basking (Cetorhinus maximus), silky (Carcharhinus falciformis), white (Carcharodon carcharias), Atlantic sharpnose (Rhizoprionodon terraenovae), Atlantic angel (Squatina dumerili), shortfin mako (Isurus oxyrinchus), longfin mako (Isurus paucus), porbeagle (Lamna nasus), thresher (Alopias vulpinus), and blue (Prionace glauca).

Analysis of the Effects: The proposed groin maintenance work would occur in waters which are subject to relatively high velocities and exposed to high seasonal boat traffic. Such an area is an unlikely spawning or nursery area for the managed species. Consequently, concentrations of the sessile life stages (eggs and larvae) of the listed species are not expected to be within the work area. Although the inlet provides important feeding habitat and a migratory pathway for several of the listed species, the limited scope of the proposed work precludes any disturbance to these functions. The pelagic adults and juveniles of the listed species are highly mobile and capable of avoiding impacts associated with the work.

Corps of Engineers View: Based on the above analysis, the Corps of Engineers has determined that the proposed project would not have substantial direct, indirect, site-specific, or habitat-wide impacts on EFH, or upon the managed species and their life stages listed in the above referenced EFH guide, either individually, cumulatively, or synergistically. The proposed project would not eliminate, diminish, nor disrupt the functions of EFH.

Proposed Mitigation: Because the impacts of the proposed work on EFH have been determined to be minor, the Corps of Engineers has determined that mitigative measures are not necessary.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. The applicant has stated that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program. No permit will be issued until the State has concurred with the applicant's certification or has waived its right to do so. Comments concerning the impact of the proposed and/or existing activity on the State's coastal zone should be sent to this office, with a copy to the State's Office of Coastal Zone Management.

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is necessary from the State government in which the work is located. Any comments concerning the work described above which relate to Water Quality considerations should be sent to this office with a copy to the State.

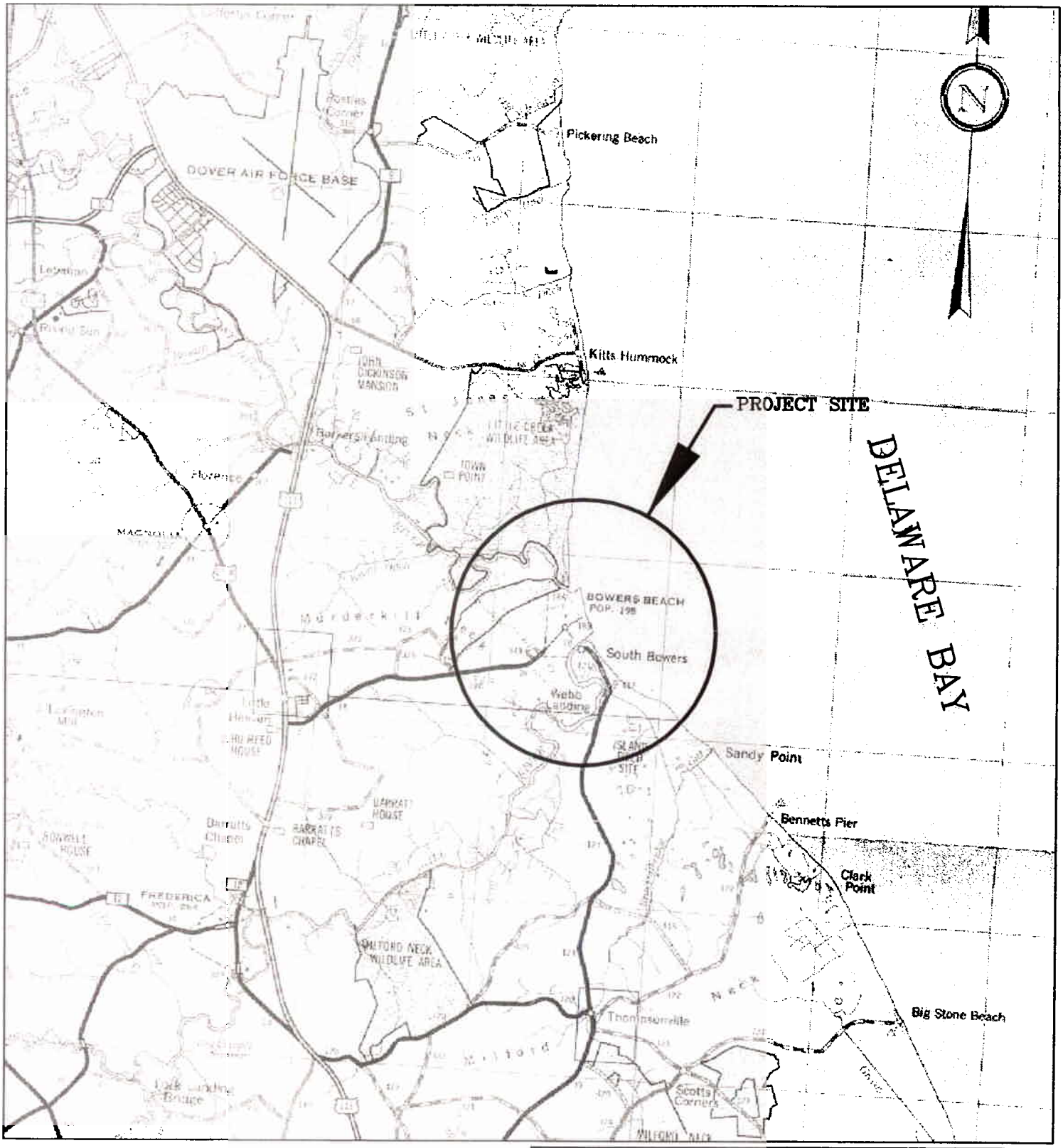
The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Additional information concerning this permit application may be obtained by calling Kevin E. Faust at 302-736-9763 between the hours of 1:00 and 3:30 p.m. or writing this office at the above address.

Frank J. Cianfrani
Chief, Regulatory Branch

LOCATION MAP



E-1

PROPOSED SAND MANAGEMENT
STRUCTURE IMPROVEMENTS
IN DELAWARE BAY
AT BOWERS BEACH
COUNTY OF KENT, STATE OF DELAWARE
APPLICATION BY DEL. DEPT. OF NATURAL
RESOURCES & ENVIR. CONTROL
DIV. OF SOIL & WATER CONSERVATION

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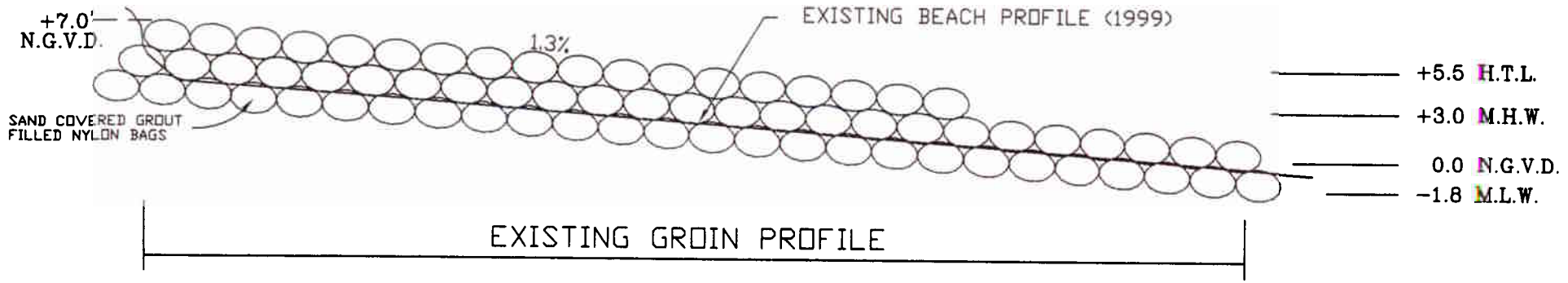
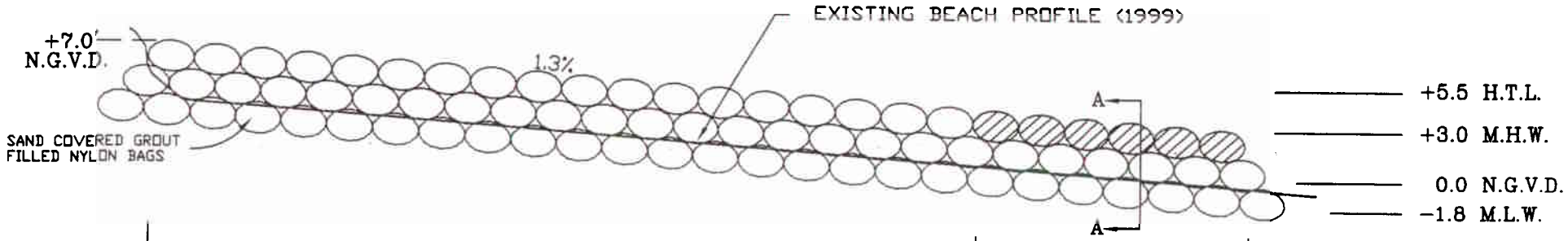
MURDERKILL GROIN EXTENSION



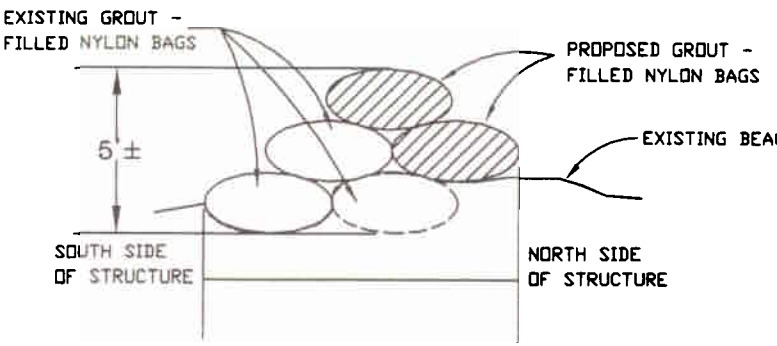
EXISTING GROIN PROFILE



EXISTING GROIN PROFILE

PROPOSED
COMPLETION OF GROIN
EXTENSION

E-2



CROSS-SECTION AT A-A
NO SCALE

VERTICAL SCALE
0 1 2 3 4 6 8
(IN FEET)

HORIZONTAL SCALE
0 30 60 120
(IN FEET)

PROPOSED SAND MANAGEMENT
STRUCTURE IMPROVEMENTS
IN DELAWARE BAY
AT BOWERS BEACH
COUNTY OF KENT, STATE OF DELAWARE
APPLICATION BY DEL. DEPT. OF NATURAL
RESOURCES & ENVIR. CONTROL
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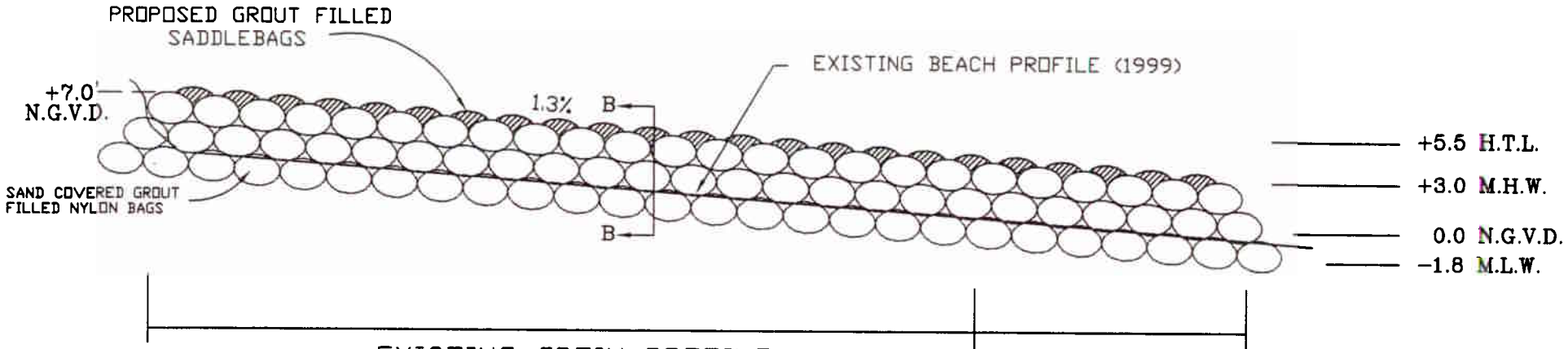
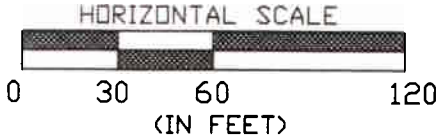
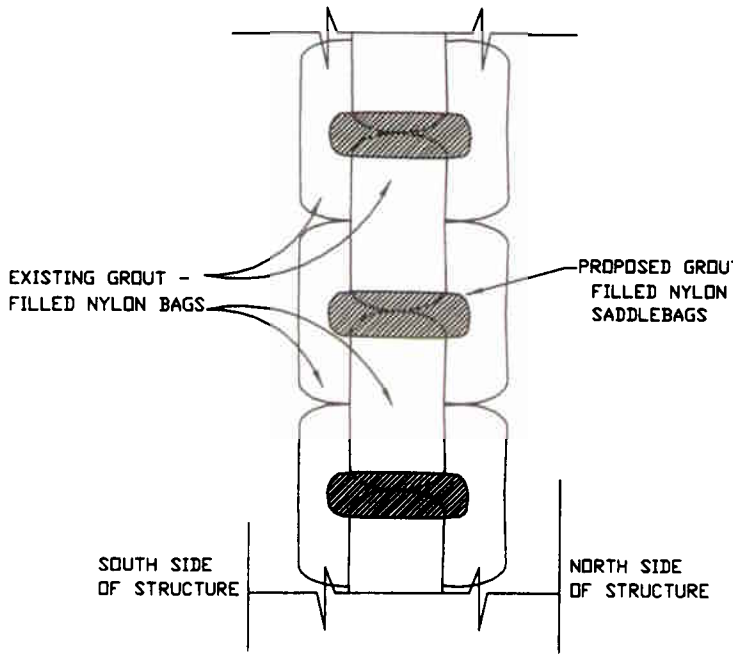
MURDERKILL GROIN EXTENSION







PLAN VIEW SECTION AT B-B

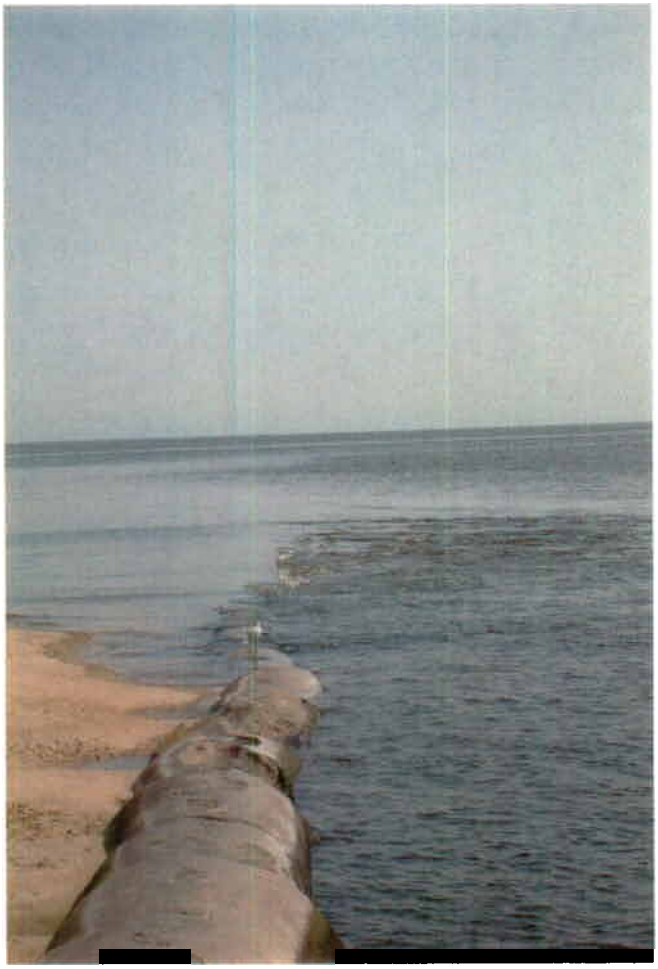
NO SCALE

E-3

SHEET 3 OF 3

PROPOSED SAND MANAGEMENT STRUCTURE IMPROVEMENTS
IN DELAWARE BAY
AT BOWERS BEACH
COUNTY OF KENT, STATE OF DELAWARE
APPLICATION BY DEL. DEPT. OF NATURAL RESOURCES & ENVIR. CONTROL
DIV. OF SOIL & WATER CONSERVATION

Bower's Groin during high tide. Section of groin is underwater during high tide, allowing sediment to filter over the structure into the Murderkill River channel.



E-4